

burden of justifying, by clear and convincing evidence of dangerousness or flight risk, Diallo's continued detention; or (2) release Diallo from custody, under reasonable conditions of supervision.” Order [Dkt. 6] (emphasis added).

2. This Court further ordered Respondents to file notice on or before February 5, 2026 informing the Court whether Diallo has been released and, if he has not been released, “Respondents shall inform the Court whether and when a bond hearing was held in accordance with the preceding paragraph. Respondents shall further inform the Court, in detail, of the reasons for the IJ’s decision.” *Id.*
3. On February 5, 2026, Respondents filed an advisory informing the Court that Mr. Diallo had been denied bond as a “flight risk,” attaching an order from the Immigration Court. [DKT 8 and 8-2].
4. The sole reason articulated by the IJ for determining Mr. Diallo is a flight risk is that his asylum claim has been pretermitted and he will be removed to a third country, Uganda, pursuant to an Asylum Cooperative Agreement (ACA). [Dkt. 8-2]. However, the record of the proceeding in the Executive Office for Immigration Review’s online Case Portal (E-CAS) indicates the Immigration Judge did not grant the government’s motion to pretermitt Mr. Diallo’s claim for asylum. Exhibit A, E-CAS notation. Since the motion to pretermitt was not, in fact, granted, *id.*, there was no basis articulated in the record for denying Mr. Diallo’s bond as a flight risk.
5. On information and belief, the government moved for the first time at Mr. Diallo’s bond hearing, without notice to his existing immigration counsel, to pretermitt his valid asylum claim and send him to Uganda based on a third country cooperative agreement with that

country. [Dkt. 8-2]. Third Country Asylum Cooperative Agreements (ACAs) are agreements that purport to implement the “safe third country” provision of the asylum statute, 8 U.S.C. § 1158 (a)(2)(A). *See* Implementing Bilateral and Multilateral Asylum Cooperative Agreements Under the Immigration and Nationality Act, 84 Fed. Reg. 63994 (Nov. 19, 2019). If a claimant can be resettled in a safe third country pursuant to an ACA, the government may move to terminate (preterm) the claimant’s pending asylum claim and order him removed to the cooperating third country to seek relief there. *Id.* Third country removals are controversial, and there is ongoing litigation seeking class certification to raise constitutional and statutory challenges to the use of ACAs to bar asylum claims. *See generally U.T. v. Bondi*, 1:20-cv-00116-EGS [Dkt. 174] (Dist. D.C., Dec. 19, 2025).

6. Mr. Diallo is a member of that putative class of “[a]ll noncitizens whom Defendants have sought or will seek to bar from asylum, withholding of removal, or protection under the Convention Against Torture in removal proceedings under 8 U.S.C. § 1229a on the basis that they can be removed to a third country under an Asylum Cooperative Agreement pursuant to the Rule, Guidance, or Designations.” *Id.* at 1. However, this Court does not presently need to decide whether the use of an ACA to bar Mr. Diallo’s asylum and related claims for relief is legal, because the Immigration Judge did not grant the government’s motion to preterm Mr. Diallo’s claim for asylum. **Exhibit A**, E-CAS notation.
7. The only question in front of this Court is whether the IJ’s denial of bond, solely because of the existence of the government’s preterm mission motion, satisfies the procedural due process requirements this Court laid out in its Order of January 29, 2026. Because the denial of bond is not based on clear and convincing evidence that Mr. Diallo, individually,

is a flight risk or a danger to the community, his detention continues to violate his right to due process. *Lopez-Arevelo v. Ripa*, 801 F. Supp. 3d 668, 687 (W.D. Tex. 2025).

8. In denying bond, the IJ asked Mr. Diallo no questions about whether he is actually a flight risk or a danger to the community. On information and belief, the judge asked Mr. Diallo only whether he has ties to Uganda and speaks the language in Uganda, and heard testimony from Mr. Diallo to the effect that he fears for his life if sent to seek asylum in Uganda because of the [REDACTED] to the [REDACTED] in his home country of Guinea, and the [REDACTED] [REDACTED] [REDACTED].

9. Mr. Diallo asserted a credible fear of persecution if he is sent to Uganda because Uganda [REDACTED] [REDACTED] in his home country of Guinea. Therefore, Judge Ruhle denied the motion to pretermite and did not enter a final order of removal to send Mr. Diallo to Uganda. *Exhibit A*, screenshot of BIA ruling notations. Instead, the IJ set Mr. Diallo's case for a Master Calendar Hearing on March 5, 2026 to continue addressing his ongoing claim for asylum in the United States.

II. Argument and Authorities

a) The Government Did Not Meet Its Burden To Justify Mr. Diallo's Detention By Clear and Convincing Evidence

10. This court need not address or resolve Mr. Diallo's credible fear claims—indeed, that is a key part of what the immigration court is set to review on March 5, 2026. However, since the only basis for the IJ's denial of bond was the government's pretermission motion, and

since the IJ also denied that motion to pretermite Mr. Diallo's asylum claims and in fact kept him on the docket for a regular Master Calendar hearing on March 5, 2026, Mr. Diallo stands in exactly the same position that this Court previously found unconstitutional. There has been no finding based on clear and convincing evidence that Mr. Diallo, personally, is a flight risk or a danger to the community.

b) The Government Did Not Address Evidence That Mr. Diallo Is Rooted In His Community and Participating Appropriately In His Asylum Proceedings

11. As this Court is aware, Mr. Diallo entered the country on November 30, 2023 and was detained for three days, during which time he filed an application for asylum. [Dkt. 6 at 1]. Mr. Diallo was then released to live in Brooklyn Park, Minnesota during the pendency of his asylum claim. *Id.* On information and belief, Mr. Diallo has lived in Brooklyn Park since that time, and has made timely check-ins with the government as required during his asylum proceedings. He is represented by immigration counsel, Mr. Obi Chukwu, and has a pending application for work authorization. On information and belief, Mr. Diallo has never missed a required deadline in his asylum proceedings. He lives with his sister and helps her to care for his nieces and nephews. He is grounded in his community and is an active and timely participant in his asylum proceedings.

12. The government did not engage with any of these facts in characterizing Mr. Diallo as a flight risk. Instead, the Government moved to terminate his asylum claim and send him to Uganda under an Asylum Cooperative Agreement (ACA) with that country, and then argued Mr. Diallo would be a flight risk because he lacked any path to legal status as a result of that ACA pretermission. *See* [Dkt. 8-2]. Notably, although Mr. Diallo is represented by immigration counsel, Mr. Obi Chukwu, and this attorney is listed on Mr.

Diallo's asylum application, on information and belief, the Government did not inform Mr. Diallo's immigration counsel or Mr. Diallo's pro bono habeas counsel that a motion to pretermitt his asylum claim was being made or that a hearing would be set on this motion to pretermitt during the bond hearing ordered by this Court. In fact, on information and belief, Mr. Diallo's immigration counsel was not provided notice of the hearing at all and was therefore not present, and Mr. Diallo's pro bono habeas counsel was excluded from the hearing by the Immigration Judge. Mr. Diallo was forced to confront the pretermittion motion alone, without counsel and without notice.

c) A Motion to Pretermitt, Without More, Is Not Clear and Convincing Evidence That an Individual Is a Flight Risk

13. In denying bond for Mr. Diallo, the Immigration Judge did not consider any individualized evidence concerning whether Mr. Diallo is a flight risk. The sole ground articulated by the IJ for denying bond is the pretermittion of Mr. Diallo's asylum claim and the supposition that, once pretermitted and therefore lacking a pathway to legal status, petitioner would be "highly unlikely to comply with a future order to depart the United States unless detained." [Dkt. 8-2]. But the IJ did not, in fact, pretermitt the asylum claim and enter an order of removal to Uganda—instead, he denied the pretermittion motion and returned the asylum claim to the docket for a master calendar hearing on March 5, 2026. Exhibit A. Mr. Diallo does not, in fact, lack a legal pathway to remain in the United States—he is continuing to pursue his un-pretermitted asylum claims at this master calendar hearing.

14. Mr. Diallo remains detained in a federal prison camp with no individualized determination that he is a flight risk or a danger to his community, awaiting a Master Calendar Hearing on his asylum claim, even though he was previously released from custody and has been a

model participant in the asylum process since 2023. *This is the exact same circumstance this Court has previously found violates Mr. Diallo's right to procedural due process.*

15. Mr. Diallo is not challenging a decision to execute a removal order—there is currently no removal order to execute. *See Lopez-Arevelo*, 801 F. Supp. 3d at 678. Nor is he challenging the substance of his removal proceedings—on the contrary, he continues to participate fully in those proceedings before the Immigration Court and, to the extent necessary, the BIA, including in the Master Calendar hearing coming up on March 5, 2025. *See id.* He challenges only his ongoing detention, and this court has jurisdiction over that claim. *Id.*
16. The Government may well continue to urge its motion to pretermitt Mr. Diallo's asylum claim in further removal proceedings. But the IJ has not granted that motion, and there is no reason simply making a motion to send Mr. Diallo to Uganda would turn him into a greater flight risk than any other defense the government might bring to his contested asylum claim. Notably, while the government has made motions to pretermitt in a number of asylum claims since the beginning of the Trump administration, litigation over the legality of pretermittion is ongoing, *see U.T. v. Bondi*, 1:20-cv-00116-EGS [Dkt. 174] (Dist. D.C., Dec. 19, 2025), and “[a]s of mid-January, 2026, no transfers from the U.S. to Uganda are known to have occurred under the ACA.” Third Country Deportation Watch, *Uganda*, Jan. 21, 2026, available at <https://www.thirdcountrydeportationwatch.org/uganda> (last visited February 15, 2026).
17. While a final order of removal to Uganda without any avenue to appeal it might arguably create a flight risk, there is nothing about the mere existence of a motion to pretermitt that would transform someone who has been participating fully in lawful asylum proceedings into a fugitive. In this case the IJ denied bond solely because there is an ACA with

Uganda—not because the petitioner himself has actually been found to be removable pursuant to that ACA. Under these circumstances, “detaining [Petitioner] without any individualized assessment of his flight risk and dangerousness deprives him of his constitutional right to procedural due process under the Fifth Amendment of the United States Constitution.” *Lopez-Arevelo*, 801 F. Supp. 3d at 687.

d) The Proper Remedy for This Ongoing Violation of Mr. Diallo’s Right to Procedural Due Process Is Release

18. This Court has already given the government a chance to meet its burden to justify Mr. Diallo’s continued detention by providing clear and convincing evidence that he is a flight risk or a danger to the community. The government has made no attempt to engage with Mr. Diallo’s personal history, instead attempting to manufacture a flight risk by moving—without notice to Mr. Diallo’s counsel—to terminate his asylum claims and send him to Uganda. That motion was not granted, and Mr. Diallo continues to pursue his asylum claims from inside a federal detention camp in El Paso, despite the fact that he has been a model participant in the asylum process since 2023.
19. In these circumstances, Mr. Diallo should not be required to appeal the IJ’s denial of bond to the BIA. *Hernandez-Fernandez v. Lyons*, No. 5:25-CV-00773-JKP, 2025 WL 2976923, at *6 (W.D. Tex. Oct. 21, 2025). “Requiring him to wait, indefinitely, for a ruling on that appeal would be inappropriate because it would exacerbate his alleged constitutional injury—detention without a bond hearing.” *Id.* (citing *Pizarro Reyes v. Raycraft*, No. 25-CV-12546, 2025 WL 2609425, at *3 (E.D. Mich. Sept. 9, 2025) and noting that bond denial appeals typically take 6 months or more to be resolved at the BIA). Particularly given this

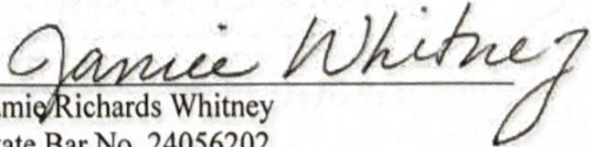
Court's prior order to provide an effective bond hearing or release Mr. Diallo, the appropriate remedy at this stage is Mr. Diallo's immediate release.

III. Conclusion and Prayer

Mr. Diallo respectfully requests that this Court reopen this case and ORDER Respondents to release him from custody, at a safe time and place in Brooklyn Park, Minnesota, with prior notice to his counsel, on his own recognizance and with all his personal effects, and further grant him all other relief to which the Court may find he is justly entitled.

Dated this 15th Day of February, 2026.

Respectfully Submitted,


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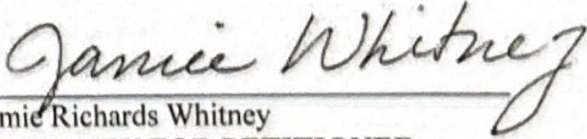
ATTORNEY FOR PETITIONER

VERIFICATION PURSUANT TO 28 U.S.C. § 2242 AND 28 U.S.C. § 1746

I represent Petitioner, Mohamed Sidy Diallo, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Motion To Reopen Petition for Habeas Corpus and Complaint for Declaratory and Injunctive Relief are true and correct to the best of my knowledge after reasonable investigation.

I further declare under penalty of perjury that the attached Exhibit A is a true and correct copy of the Executive Office for Immigration Review (EOIR) notation concerning the outcome of the February 3, 2026 hearing on the motion to pretermite Mohamed Diallo's asylum application that I saw on February 10, 2026 and February 15, 2026. This notation appeared on the EOIR Case Portal (E-CAS) as part of the E-CAS filing system's process for appealing a decision of the Immigration Judge. I accessed the E-CAS portal for Mr. Diallo's case on February 10 and February 15, 2026 and saw this notation on both occasions.

Date: February 15, 2026



Jamie Richards Whitney
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2026, I caused a true and correct copy of the foregoing Petition for Writ of Habeas Corpus and all accompanying exhibits to be served on the following:

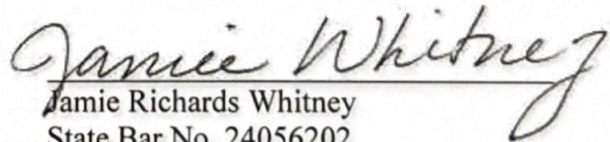
Stephanie Rico, Civil Process Clerk

U.S. Attorney's Office, Western District of Texas
601 N.W. Loop 410, Suite 600
San Antonio, Texas 78216.

Mary De Anda-Ybarra, Acting Field Office Director
ERO El Paso Camp East Montana
8915 Montana Avenue
El Paso, TX 79925
United States

Service on the United States Attorney constitutes service on all named federal Respondents in this matter, and service has also been made directly on the Acting Field Office Director as Petitioner's immediate custodian.

Dated this 15th day of February, 2026.



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